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SUBJECT: TURKEY: CONSTITUTIONAL COURT CHIEF'S SURPRISINGLY
PROGRESSIVE REMARKS CALL ON ALL FOR HIGHER STANDARDS

Classified By: Political Counselor Janice G. Weiner, for Reasons 1.4 (b
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11. (C) SUMMARY AND COMMENT. Constitutional Court Chairman Hasim Kilic candidly acknowledged tensions between law and politics in Turkey, noting a serious crisis of confidence within society in April 25 remarks marking the Court's 46th anniversary. Kilic challenged all players, the judiciary included, to uphold their roles and pursue social transformation by adopting contemporary Western values. He rejected the false dichotomy of democracy and secularism, and advocated for national unity under democracy and rule of law. Kilic called for a new civilian constitution, urged judicial self-criticism, was critical of those (opposition Republican People's Party (CHP)) using the judiciary to upend the legislative process, and issued a stern warning to the ruling Justice and Development Party (AKP) to address the concerns of those with opposing views. Kilic's surprisingly progressive speech emphasized protection of individuals and minorities and defended freedom of expression. Although some dismiss Kilic, an Ozal appointee, as pro-AKP and Islamist, his perceptive remarks make it hard to do so. Indeed, fiercely rival political pundits Emre Kongar and Cengiz Candar agreed his speech was remarkable, although it received little media attention. Only a handful of people could have delivered such a courageous speech at such a sensitive time in Turkey: it packed punches for players across the board, underscored the importance of democracy and credibly demanded Turkey raise its standards of law. END SUMMARY AND COMMENT.

A Civilian Constitution

12. (SBU) Kilic's speech took a bold tack, declaring the Constitutional Court's essential duty is to protect individual rights and freedoms against state institutions. Failure to do so would lead to a crisis of legitimacy, he said. He proposed Turkey adopt a new constitution that uses the bureaucratic structure to realize the nation's democratic will, that does not recognize any sacred value other than human dignity and freedoms and that limits basic rights only with contemporary exceptions. Constitutions written in extraordinary periods (i.e., by the military) were extreme reactions to earlier conditions, he noted. With normalization, society needs a new constitution "purged of rigid ideological dogmas," open to change and integrated with the values of society and compromise. For Turkey's social transformation to continue peacefully, politics and the bureaucracy must internalize a democratic culture consistent

with modern Western values, Kilic commented. A constitutional platform incorporating all views and sectors would result in a document acceptable to all. Noting parliament currently has no role in appointing Constitutional Court judges, Kilic said allowing this would create an important link between the people, parliament and the Court that would help eliminate a mutual lack of confidence.

Judicial Decisions Open to Constructive Criticism

13. (SBU) Kilic acknowledged highly politicized cases referred to the Court in the past year have resulted in intense public focus on the judiciary. He defended the right to criticize judicial decisions -- in democratic states, any other situation is unimaginable. Since justice is the most fundamental societal value, court decisions should be dissected and discussed to satisfy the nation's sense of justice. But he emphasized that even disputed decisions are binding; non-implementation or delay are also unimaginable where rule of law governs.

14. (SBU) Criticism of the judiciary that is insulting rather than constructive threatens social calm, Kilic added. He regretted pressure on the Court both at home and from abroad, noting in particular criticism concerning the pending AKP closure case. Such negativity will not prevent the Court from protecting the unitary and secular structure of the Republic, he said. Kilic also objected to media assessments of how individual judges will vote, often including photos, which can make judges targets (as occurred two years ago with the Council of State shooting). Law, said Kilic, is the

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protection of individuals against arbitrary administrations; the main guarantor of such a system is the judge. Erosion of this notion and making it a tool of unproductive political rivalry would be the worst thing for society.

Let Every Institution Observe its Limits

15. (SBU) Kilic accused Turkey's legislature, executive and judiciary of exceeding their constitutional authority, blaming all three branches for a "clash among powers." This clash will continue, Kilic predicted, until they understand that separation of powers centers on an appropriate division of labor and cooperation, rather than which branch has more authority.

16. (SBU) Focusing on the judiciary, Kilic pointed out that European Court of Human Rights' judgments against Turkey stem from human rights violations in Turkish judicial decisions. Legislative amendments affirming that international supersedes national law have failed to eliminate judicial negligence (or unwillingness) in implementation. Supremacy of law does not mean supremacy of the judge, Kilic stressed; a judge cannot assume a mission beyond that specified in the constitution and laws. "We must not forget that where society loses faith in justice, it is easy to lose social and political ties as well," he said. Constitutional bodies should have the courage to be self-critical.

17. (SBU) Kilic argued democracies cannot impose the tyranny of the majority, even as majority rule is key to a democratic decision-making process; a pro-freedom approach means the majority must be limited to protect minorities as well. Describing freedom of expression as a sine qua non of a democratic state of law, Kilic added that freeing people from the "think from inside" concept does not authorize expression that leads to violence. Similarly, preferring democracy over secularism, or the reverse, is objectively wrong and politically dangerous, he noted. Secularism, the basic guarantee for the coexistence of different faiths, is a "great peace project" under the protection of the Turkish nation. Initiatives to save the regime or the country through illegal powers would only serve to hasten the country's decline, Kilic warned.

Moving Forward, Together

18. (SBU) According to Kilic, a serious crisis of confidence among political, ethnic, and religious sectors of society is undeniable. Rather than inciting to polarization, Kilic said societal and institutional compromise are needed now more than ever. Without naming AKP, he warned societal fissures will deepen if those in power do not eliminate the fears and doubts of those who defend opposing views. The fears people feel cannot be denied, he said. "We must solve our problems through dialogue and within the boundaries of legal principles, not through conflict." Every problem can be solved with democracy and rule of law; it should be a common goal for the Turkish boat to sail in peace, comfort, and security, Kilic concluded.

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WILSON